IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 895 OF 2006

1. Union of India,]
Through General Manager, Western]
Railway, Headquarters Office,]
Churchgate, Mumbai - 400 020.]

2. Chief Personnel Officer,]
Western Railway, Headquarters Office,]
Churchgate, Mumbai- 400 020.] .. Petitioners

Versus

Nandkishore Khatib Jangad,]
Residing at village Hingonia,]
Via Junia, The: Sarvar, Dist:Ajmer,]
Rajasthan.] .. Respondent

Ms. N.V. Masurkar for the petitioners.

Mr. Rahul Walia for the respondent.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 19TH APRIL, 2006

ORAL JUDGMENT. : [Per F.I. Rebello, J.]

. Rule. Heard forthwith.

2. Respondent was the original applicant in Original Application No.592 of 2004 filed before the Central Administrative Tribunal (CAT), Bombay Bench,

Mumbai. The petitioners herein, through the Railway Recruitment Board, Ahmedbabad (for short "RRB") had invited applications from eligible persons for vocational training, for giving them employment in the Commercial Department of Western Railway. The respondent appeared for the written examination and having successfully passed the same, was called for an interview and was selected. A communication was sent, dated 1st June, 1999, regarding his provisional selection subject to the respondent being found eligible in all other respects after verification of the various documents produced by him and also found fit in medical check-up by the Railway doctor. Respondent was sent for training for two years after he was found medically fit. Respondent accordingly underwent the training course for two years as prescribed and passed the training course. Respondent was informed by the petitioners by their letter dated 31st October, 2002, that he was considered eligible for appointment to the post of Assistant Commercial Clerk/Ticket Collector. Respondent, was sent for medical examination before appointment for C-1 category and was found unfit, but declared fit for C-2 category which is the minimum standard required for clerical/ministerial cadre. The respondent made representation for giving him alternate appointment. By communication of 6th October, 2003, he was informed that

he could not be appointed in the alternative category.

3. An Original Application came to be filed on account of the failure by the petitioners to give the respondent alternative appointment. It was the case of the respondent that in terms of Railway Board order dated 20th August, 1999, he ought to have been absorbed in alternate clerical category being a direct recruit. It was also pointed out that the petitioners themselves had appointed various other persons in alternate category who were similarly situated. In reply, the petitioners contended that the Circular of the Railway Board dated 29th August, 1999, is not applicable to the respondent as he was appointed to VCRC Scheme wherein HSc students are considered for appointments to the post of Assistant Commercial Clerk, subject to condition prescribed in the said Scheme. The VCRC Scheme does not have a facility of offering alternate appointments as has been clarified by the Railway Board vide its order dated 26th March, 2003. The respondent was offered appointment as A.C.C., but he was not found fit for C-1 category, which is an essential requirement for the post of A.C.C.

. The learned Tribunal, after considering the case of the parties noted that what the petitioners are

seeking to is to make a distinction between the selection by VCRC and selection for the vacant post where a Panel is made by RRB. The learned Tribunal noted that before the petitioner was sent for training, he was medically examined and found fit for the purpose of training and appointment. The Tribunal found that the respondents ought to be treated as belonging to the direct recruit category and that once he was recommended by RRB for admission to the vocational course on Railway Commercial (2 years job linked course) and after successful completion of the course, the respondent could not be denied the benefit of the Circular dated 20th August, 1999. The Tribunal held that the Railway Board Circular dated 20th August, 1999, does not specifically exclude VCRC Scheme from its ambit and in these circumstances, directed the petitioners to consider the respondent for an alternative employment under the petitioners where the medical fitness category is C-2. It is this order which is the subject matter of the present Petition.

4. At the hearing of this Petition, on behalf of the petitioners, learned counsel submits that the Circular of the Railway Board dated 20th August, 1999, is not applicable to those recruited by VCRC. It is applicable only to direct recruits and consequently, the

order of the Tribunal suffers from error of law apparent on the face of the record and is consequently liable to be quashed and set aside.

5. The main issue which falls for our consideration, is whether the Railway Board Circular of 20th August, 1999, applies to the respondent. The relevant portion of the Circular may be reproduced:

> ". At present, General Managers are authorised to consider request from candidates empanelled by RRBs but failing in prescribed medical examination for appointment in alternative technical categories, and SC/ST candidates in non-technical categories also, subject to certain conditions.
>
> . Board have reviewed the policy, keeping in view high cost of recruitment and the need not adopt uniform policy for all candidates and for all categories of recruitment. It has consequently been decided that the General Managers shall hence forth have the authority to consider requests from candidates of non-technical categories also, who fail in the prescribed medical examination after empanelment by RRB for their appointment in alternative category, subject to fulfillment of the prescribed medical standard, educational requirement and other eligibility criteria for the same grade post in alternative category. Such considerations shall be on the same lines as hitherto done for technical categories. The decision of the General Manager regarding availability and identification of the vacancy in alternative grade, including other relevant factors required to be considered, shall be final."

. It is thus clear from a reading of the said Circular that candidates who fail in the prescribed medical examination, after empanelment by RRB can be appointed in alternative category and it is applicable to all categories of employment. The consideration for appointment is after empanelment by RRB. The only issue is whether the appointment for VCRC is excluded and appointment by direct recruitment is to be considered. The Circular does not use the expression "direct recruitment". The expression used is" empanelment by RRB". The selection procedure was set into motion by RRB. There are qualifications for being eligible for consideration. The candidate, if selected thereafter has to undergo a two years' training course and only on successful completion of the training course, the candidate is to be appointed to the post for which he was recruited through the process of vocational training. In other words, all the ingredients of empanelment are to be met. The only difference is that instead of directly appointing such a candidate to the post, he has to first undergo the training of two years and only on successful completion of the training, he is to be appointed to the post provided that he passes the examination and is declared medically fit. There would be, therefore, no distinction between a candidate

empanelled by RRB and who is declared medically unfit and

a candidate who is selected by VCRC method, passes the examination and is declared medically unfit. In our opinion, it will not be possible for the petitioners to make any such distinction. The source of recruitment in both the cases is by direct recruitment. The only distinction or difference is that by the VCRC method one has to undergo training and the other has not to undergo said training. The exercise in both cases has to be done by RRB. The expression "Empanelment by RRB", therefore, will also have to mean those who are found successful in the process for selection by VCRC and thereafter passing the examination. If both are considered they constitute same or similar class. The Circular of the Railway Board would clearly be arbitrary inasmuch as, if the object of the Circular is to give benefit to those who are selected but fail the medical test, then we see no reason as to why only those selected by RRB directly should be given the benefit and not those who are selected by the process of VCRC. It is a normal rule of construction that as far as possible, the validity of a Circular has to be upheld like any other law by reading it in the proper context. If read in the proper context, it would include all empanelled candidates, whatever be their source of

recruitment, be it for vocational training by RRB or RRB directly. We are, therefore, clearly of the view that the view taken by the Tribunal is a view which view could have been taken for the reasons set out by us and consequently, it cannot be said that the order suffers from any error apparent, to warrant interference by this Court in exercise of its extra ordinary jurisdiction.

5. On the facts of this case, we must also note that when the candidate was first selected for VCRC, he had passed the medical test as noted in the order of the Tribunal. In our opinion, the communication dated 23rd June, 2003, by the Office of the General Manager would not be the correct interpretation of the Railway Board Circular of 20th August, 1999. The correct interpretation as we have held out is that candidates who had also appeared through VCRC and ultimately are found medically unfit in C-1 category are also entitled to the benefit of the said Railway Board Circular.

6. For the aforesaid reasons, we find no merit in this Petition. Accordingly, Rule discharged. There shall be no order as to costs.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]